IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

CRIMINAL APPLICATION NO.3780 OF 2004
IN
CRIMINAL APPEAL NO.647 OF 2000

Sharif Khan Rashid Khan Applicant

Vs.

Union of India & anr. Respondents

Mr.Anil Lalla for applicant.
Mr.R.F.Lambay for Resp.No.1.

CORAM: S.S.PARKAR & SMT.V.K.TAHILRAMANI,JJ.

October 14, 2004.

P.C.

This is the third application made for release of the applicant on bail pending the hearing of the appeal filed by the prosecution against the order of acquittal. Earlier a Division Bench of this Court, to which one of us (Smt.Tahilramani,J.) was a party, had rejected the application for bail on 14th November 2003 in Criminal Application No.4155 of 2003 on the ground that the applicant was earlier convicted under the provisions of the NDPS Act. Thereafter second application was made for bail being Criminal Application No.857 of 2004 which was rejected by us by our order dated 23rd February 2004. While rejecting the second application a direction was given for expediting the hearing of the appeal and also for preparing the appeal paper book expeditiously and for

placing the appeal for hearing as soon as the appeal paper book was ready in the matter. Thereafter the present application is made.

In the present application we had directed the Registrar of the Sessions Court, Greater Bombay to remain personally present before us to explain why the appeal paper book was not ready in spite of our previous direction to prepare it expeditiously. Thereafter the appeal paper book was filed in the Court.

Mr.Lalla contends that the applicant is in custody for a period of eight and half years and, therefore, it is desirable that he should be released on bail. He contends that there is no order of conviction recorded against him and he is kept in custody in appeal against the order of acquittal by virtue of the order passed under Section 390 of Cr.P.C. He draws our attention to Section 427 of Cr.P.C. According to him this applicant was initially arrested in January 1992 for the previous offence under the provisions of the NDPS Act. However, he was granted bail in September 1993. While on bail in the earlier prosecution he was arrested on 13th January 1995 for the present offence and was acquitted by the order dated 13th July 1999. In the mean time he was convicted in the

earlier case some time in the year 1997 and since then he is in custody. So far as this appeal is concerned he was taken into custody in November 2000. By relying on Section 427 of Cr.P.C. Mr.Lalla contends that it is possible that the imprisonment undergone by the applicant in the previous case in which he was convicted could be counted for the purpose of undergoing sentence in the present case in case he is convicted in the appeal against the order of acquittal filed by the prosecution. That way he will be in custody even in this case for a period of 8 and 1/2 years during which period he was also undergoing the sentence in the previous case which, according to him, had expired about a year back.

As per section 427 of Cr.P.C. the imprisonment in subsequent case shall commence on the expiration of the imprisonment awarded in previous case unless the Court directs that the subsequent sentence shall run concurrently with the previous sentence. Mr.Lambay, however, rightly contends that the said question can be decided only at the time of hearing of the present appeal in case the applicant is convicted.

Since the application for bail was rejected previously when the Court was aware of the fact that the

applicant was undergoing sentence in the previous case and since the appeal paper book has been expeditiously prepared and the appeal is ready for hearing, we are of the view that in the facts and circumstances of the case, it would be highly desirable to place the appeal itself for immediate hearing. The application for bail having been previously rejected, we are not inclined to reconsider it now when the appeal itself is ready for hearing.

In the result, this application for bail is rejected. However, in the aforesaid facts the appeal deserves to be placed for immediate hearing. The applicant-accused shall have liberty to apply for fixing the appeal for hearing before the appropriate Bench.

(S.S.PARKAR,J.)

(SMT.V.K.TAHILRAMANI,J.)